RECENT CASES.

COMMON CARRIERS.

Damaged Goods—Liability of Carriers.—Morganton Mfg. Co. v. *Ohio R. and C. Ry. Co.*, 28 S. E. Rep. (N. C.) 474. Where defendant's agent received a box of goods which had been shipped over several connecting lines, and marked the bill of lading "O. K.," and the goods are found to be damaged at the end of the line, a rebuttable presumption arises that they were injured after they were thus received. If the contents of the box were unknown to the defendant, liability could have been guarded against by examination or stipulation, and failure to do so was negligence (*Dixon* v. *Railroad*, 74 N.C. 538).

Telegraph Companies—Rules—Effect on Receiver of Telegram—Presentation of Claim.—Webb v. *Western Union Tel. Co.*, 48 N. E. Rep. (Ill.) 670. A rule of a telegraph company printed upon the back of the telegram, requiring all claims for damages to be presented within sixty days is not binding upon the receiver of telegram in the absence of proof that he assented thereto. And where the action is one sounding in tort for a mistake in transmitting the telegram the mere knowledge of such a rule by the receiver will not affect his right to recover. While there may be a contract relation between the sender of the message and the company which under proper condition will bind the sender, there is no contract relation between the receiver and the company, and his proper remedy for damages for its alteration is an action in tort (*Telegraph Co.* v. *Fairbanks*, 15 Ill. App. 600). As the receiver's remedy is in tort, the company cannot compel a claim for loss to be made in any particular time. As a general rule an action for tort can be brought within any time allotted by the statute of limitations (Gray on Communication by Telegraph, § 75; *Telegraph Co.* v. *Underwood*, 37 Neb. 315).

Carriers—Cars for Colored Passengers.—Louisville and N. R. Co. v. *Catrow*, 43 S. W. Rep. (Ky.) 443. Section 801 of the separate coach laws (Act May 24, 1892) reading, "The provisions of this act shall not apply to * * * officers in charge of prisoners," construed as an exception in favor of the officer and not of the prisoner; and therefore no action will lie against the railroad in favor of an officer, because a colored prisoner whom he was transporting was obliged by the conductor to occupy the coach reserved for colored people, thereby necessitating the officer's presence in that coach in order to guard his prisoner.

Railroads—Transportation Facilities—Discriminations.—Little Rock and Ft. S. Ry. Co. et al. v. *Oppenheimer et al.*, 43 S. W. Rep. (Ark.) 150. In a year when the crop and shipments of cotton were unusually large appellant railway company furnished sufficient cars at certain points on its route where there were competing lines and superior advantages for shipment to carry all cotton offered, but at certain intermediate points failed to furnish cars sufficient to ship cotton as fast as it was offered. Act of March 24, 1887, sec 1, provides that "All individuals, associations and corporations shall have equal rights to have persons and property transported over railroads in this State, and no unjust or undue discrimination shall be made in charges for, or in facili-

ties for, transportation of freight or passengers within the State," etc., and section 4 provides that no discrimination in charges or facilities for transportation shall be made between individuals and transportation companies, by any means, nor shall any preferences be made in furnishing cars and motive power, etc. For violations of these sections a penalty is prescribed (sec. 12), which may be recovered by civil action by the party aggrieved. *Held*, the facts did not show such an unjust discrimination as to subject the company to the penalty at the suit of a shipper. So long as all the individuals at any given station are treated alike there can be no discrimination within the meaning of the act. The dissenting opinion maintains, however, that there is nothing in the act limiting the discrimination to individuals. See *Chicago and A. R. Co.* v. *People*, 67 Ill. 11.

EVIDENCE.

Evidence—Coroner's Verdict—Life Insurance—Suicide.—Germania Life Ins. Co. v. *Ross-Lewin et al.*, 51 Pac. Rep. (Col.) 488. In an action to recover upon an insurance policy, *held*, that the duly-certified verdict of the coroner's jury as to the alleged suicide of deceased was not admissible. The statutes prescribing the coroner's duties are construed as making him a conservator of the peace and the purpose of his inquisitions to furnish the foundation for a criminal trial where the death is shown to be felonious. As no judicial powers are conferred on the coroner by statute, the inquest proceedings are extra-judicial and not admissible as evidence to prove suicide. The English rule admitting such evidence is based on purely historical grounds and should not prevail over the injury to public policy which would result from the attempt to corruptly influence the inquests if such testimony were admitted. The Illinois cases, under statutes similar to those of Colorado, declare such evidence admissible. See, also, *Walther* v. *Ins. Co.*, 65 Col. 417, 4 Pac. 413; *Ins. Co.* v. *Newton*, 22 Wall. 32. Campbell, J., concurring specially, asserts the admissibility of such testimony, citing especially the common law and Illinois rule.

Bills and Notes—Liability of Parties—Oral Testimony.—Shuey v. *Adair*, 51 Pac. Rep. (Wash.) 388. An agreement between the maker, payee and indorser of a negotiable note, that the payee shall look to the indorser and not to the maker for payment, cannot be proved by oral evidence in order to relieve the maker of his responsibility. The cases on this point are in apparent and bewildering conflict, and many of them seem at first sight to sustain the admissibility of such testimony. But the cases where such evidence is rightly admitted fall within one of three principles, viz.: (1) Where the check or order drawn by the agent discloses the principal, see *Brockway* v. *Allen*, 17 Wend. 40; *Whitney* v. *Wyman*, 101 U. S. 392; *Hill* v. *Ely*, 9 Am. Dec. 376; *Cragin* v. *Lovell*, 109 U. S. 194, 3 Sup. Ct. 132, and cases there reviewed; (2) where there is enough on the face of the written instrument to render it doubtful whether it was the intention to bind the agent or the principal, see *Mechanics' Bank of Alexandria* v. *Bank of Columbia*, 5 Wheat. 326; *Michels* v. *Olmstead*, 14 Fed. 219; *Metcalf* v. *Williams*, 104 U. S. 93; *Kean* v. *Davis*, 21 N. J. Law 683; Mechem, Ag. § 449; and, (3) where the instrument was to be delivered upon the taking effect of some future stipulated condition, and it has been delivered before such condition is performed, see *Small* v. *Smith*, 1 Denio. 583; *Bank* v. *Lucknow*, (Minn.), 35 N. W. 434; *Westeman* v. *Krumweide*, (Minn.), 15 N. W. 255. As a matter of course the defense of fraud or mistake is always available, see *Hill* v. *Ely*, *supra*,